

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA**

WALTER BECK CORPORATION d/b/a
THE RAINBOW INN,

Plaintiff,

Civil Action No. 04-348-Erie

Judge Maurice B. Cohill, Jr.

VS.

SAFECO CORPORATION, AMERICAN
ECONOMY INSURANCE COMPANY,
and AMERICAN STATES INSURANCE
COMPANY,

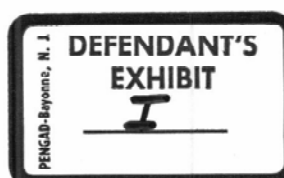
Defendant.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF McKEAN)

And now comes, Marta McHale, who deposes and says as follows:

1. I am Marta McHale, the corporate secretary of Sundahl & Co., Inc., insurance agency.
2. In that capacity, I am a custodian of records. I make this affidavit of my own personal knowledge and information.
3. The Walter Beck Corporation operated a tavern, The Rainbow Inn, and was a customer of Sundahl & Co., Inc., at the time of a fire which occurred at the Rainbow Inn on December 5, 2003.
4. I have provided a copy of the Sundahl & Co., Inc. office file regarding insurance matters for the Walter Beck Corporation, in which Sundahl & Co. may have been involved. Copies



of our office file were provided to counsel for the Walter Beck Corporation and counsel for American Economy Insurance Company.


5. Part of that file consists of a form partially completed, on behalf of the Walter Beck Corporation by it, for Selective Insurance. The form is attached as Exhibit A-A1 to this affidavit and is a correct copy of the Selective Insurance form in the Sundahl & Co. file. The Selective Insurance form was located in, our office file for the Walter Beck Corporation's 1997 office insurance file.

6. Also attached is a Restaurant Supplement that was completed in 2003, but not transmitted to the insurer, as the Rainbow Inn was placed on the market for sale at that time. The form was retained in the Sundahl & Co. office file for the Walter Beck Corporation. This form is attached as Exhibit B hereto.

7. Exhibit B was completed by Sharyn Beck, who is an officer of the Walter Beck Corporation.

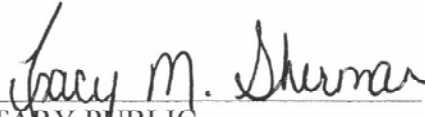
8. Both Exhibit A-A1 and Exhibit B are correct copies of the records which were and are maintained in the ordinary course of the business of Sundahl & Co., an independent insurance agency.

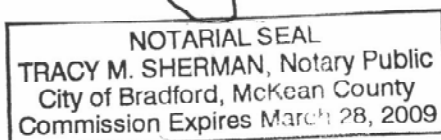
9. If called as a witness, I can testify to the above. Further the affiant sayeth not.


Marta McMahon

Sworn and subscribed to before me this 17th day of November,
2006.

My commission expires on the 17th day of November, 20 06.


NOTARY PUBLIC



08/22/96

Case 1:04-cv-00848-MBC

Document 40-5

Filed 02/23/2007

INSURANCE
Selectivethe Selective Summit
RESTAURANTS
Supplemental Application

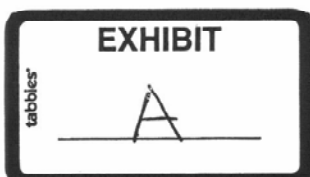
Named Insured	Agent	Date

Eligibility/Underwriting Information

YES NO

- Has the business been in operation at the same location for at least 5 years? ☐ YES ☐ NO
- Is this a franchise-type restaurant? If yes, years in business under same management? ☐ YES ☐ NO
- Does the cooking exposure have:
 - Approved AES? ☒ YES ☐ NO
 - Automatic fuel shut-off? ☒ YES ☐ NO
 - AES maintenance contract every 6 mo? ☐ YES ☐ NO
 - Hood & Duct independent maintenance? ☒ YES ☐ NO
 - Manual pull in exit path? ☒ YES ☐ NO
 - High limit control on deep fat fryer? ☒ YES ☐ NO
- Any properties over 25 years old? If so, have the plumbing, heating and electrical systems been updated in the last 15 years? ☐ YES ☐ NO
- If frame construction, is the public protection class 7 or better? ☐ YES ☒ NO
- Any banquet or catering operations? If yes, receipts \$ ☐ YES ☐ NO
- Protective devices:
 - Central station fire/smoke alarms? ☐ YES ☐ NO
 - Emergency lighting? ☐ YES ☐ NO
 - Burglar alarm? Central station ☐ Local ☐ ☐ YES ☐ NO
 - Sprinkler system? ☐ YES ☐ NO
- Any entertainment provided? If so, please describe ☐ YES ☐ NO
- Is there any delivery? If yes, whose vehicles are used?
 - Employee's vehicle ☐ Insured's vehicle ☐ ☐ YES ☐ NO
- Is the business seasonal? ☐ YES ☐ NO
- Is there any table side cooking? ☐ YES ☐ NO
- Are 50% or more of the menu items deep fat fried? ☐ YES ☐ NO

Additional Coverages:

☐ ElitePac Extension Endorsement☐ Liquor Law Liability (Please complete a.- e. On page 2)

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Liquor Law Liability Eligibility/Underwriting Information:

- a. Annual receipts from the sale of alcoholic beverages? \$ _____
- b. Has the license ever been revoked or suspended? ☐ Yes ☐ No If yes, explain.
- c. Has management provided a written procedure or any formal training to employees to avoid selling liquor to intoxicated persons?
- ☐ Yes ☐ No If yes, attach written procedure and describe formal training.
Does it include: ☐ TIPS ☐ ID/Age Identification ☐ Drink Cut-Off
- d. Are there any special programs with respect to reducing loss potential from drivers who have been drinking (such as offering free non-alcoholic drinks or free rides home)?
- ☐ Yes ☐ No If yes, describe.
- e. Are there any inducements to attract customers to the premises (such as "happy hour," "two-for-one" or "ladies nights," amusement devices or live entertainment)?
- ☐ Yes ☐ No If yes, describe.

ADDITIONAL COMMENTS:

RESTAURANT SUPPLEMENT

Applicant: WALTER BECK CORPORATION DBA RAINBOW INN

1. Number of years in business under current ownership? 14 At this location? 14
2. Has the owner ever been involved in a bankruptcy or business failure? Yes ☒ No If yes, explain in Comments section.
3. If needed, will financial statements be provided prior to binding? ☒ Yes ☐ No
4. What are the gross sales for past 3 years:
 Year 2002 Food \$ 8000 Liquor \$ 20,000
 Year 2001 Food \$ 20,000 Liquor \$ 33,000
 Year Food \$ Liquor \$
5. What are the hours of operation? varies - 12pm - 9pm open 4 days a wk
6. Is the business seasonal? Yes ☐ No Months of operation: to
7. Is there a bar or lounge? ☒ Yes ☐ No If yes, describe in Comments section.
Happy Hour Yes ☒ No
8. If liquor is served, describe the training protocol for liquor servers in the Comments section.
9. Is there live entertainment? Yes ☒ No If yes, describe in Comments section (type, nights per week, hours, etc.).
10. Is there a dance floor? Yes ☒ No If yes, what is its size?
11. Are there any operations away from the premises, such as catering? Yes ☒ No If yes, explain in Comments section.
12. Any tableside cooking or food preparation? Yes ☒ No
13. Was the building originally built as a restaurant? Yes ☐ No If no, has wiring, etc., been updated for restaurant occupancy? Yes ☐ No When?
14. Which floor is the restaurant located on? 2
15. Maximum seating capacity of restaurant: 60 Of lounge: 30
16. Number of exits: 2 Are all exits free of obstruction, lighted and marked with exit signs? ☒ Yes ☐ No
17. Is there emergency lighting? ☒ Yes ☐ No
18. Has insured ever been cited by Board of Health? Yes ☒ No If yes, explain in Comments section.
19. Housekeeping: Excellent; ☒ Good; Fair; Poor
20. Valet Parking: Yes ☒ No
21. Is there a coat check room? Yes ☒ No
22. Are all areas over ranges, grills, fryers, and all other cooking surfaces, and hoods and ducts protected by an automatic fire extinguishing system? Yes ☒ No Is the extinguishing system UL300 compliant? Yes ☒ No
23. Is there a maintenance agreement to regularly inspect and service the system? Yes ☒ No Times per year?
24. Are the employees trained in the use of the automatic extinguishing system and portable fire extinguishers? ☒ Yes ☐ No
25. Is there a maintenance agreement with an outside firm to clean the hood and duct system? Yes ☐ No If no, explain in Comments section.
26. How often are the grease filters cleaned by the employees?

Comments:

EXHIBIT

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